

PROCLAMATION

BY THE

Governor of the State of Texas

41-1727

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JUN 21 1979

June 13, 1979

Pursuant to Article IV, Section 14 of the Constitution of Texas, I hereby veto House Bill 595, relating to claims against units of government based on written contracts, for the following reasons:

This bill, if it became law, would make two important changes in state law governing claims against governmental entities based on written contracts. It would abolish the state's defense of immunity from suit without permission as to such claims, and it would make the state and each unit of local government liable on a written contract "as if it were a private corporation."

I believe that neither of these changes in state law should be made without thorough and careful consideration of the effect each change will have on units of government as well as the public. This bill passed both houses of the legislature in the last week of the legislative session. As well as I can determine, the full effect of the bill has not received the sort of study it deserves.

A persuasive case may be made for abolishing the defense of sovereign immunity in contract actions. The defense was abolished to a limited extent as regards personal injury claims by enactment of the Texas Tort Claims Act in 1969. The existence of a legal doctrine that requires a private party to obtain consent of the legislature, generally granted by passage of a resolution, in order to have his day in court, is difficult to defend. At the very least, this tends to deny, if not deny, justice to private entities that have legitimate claims against state government. Under current law, a private party may not be required to obtain the consent of a unit of local government to file a suit on a written contract, or any claim for that matter; immunity from suit without permission applies only to the state. This distinction is difficult to justify. Furthermore, eliminating the need for legislative consent for each individual suit would free the legislature from the burden of having to pass numerous resolutions to sue the state at each regular session.

If House Bill 595 did nothing but abolish the defense of immunity from suit without legislative permission, I might be inclined to approve it, provided that I could be satisfied that the attorney general's office were prepared for whatever increased case load might result. However, the provision that the state and each other unit of government is liable on its written contracts "as if it were a private corporation" raises questions in my mind that make it impossible for me to permit this bill to become law.

Although in most instances the contractual liability of units of government and of private corporations are parallel, there are instances in which they diverge. There are many more legal safeguards applicable to contracting by units of government than are applicable to contracting by private corporations. The law is rather strict, for example, on the question of who has legal authority to enter a binding contract on behalf of a unit of government. A contract of a unit of government may be held void if competitive bidding or other applicable procedural requirements are not satisfied. These safeguards were created to protect the public interest, which is affected to a much greater extent by contracting by government than by contracting by private entities.

A corporation is frequently held liable on a contract even though the agent who executed the contract on behalf of the corporation exceeded his authority. Under similar circumstances, a contract made on behalf of a unit of government is more likely to be held void.

Any change in the law governing the contractual liability of units of state and local government must be carefully drafted to preserve procedural safeguards that protect the public interest. House Bill 595, in my opinion, fails to meet this test.

Respectfully,

W. P. Clements
William P. Clements, Jr.
Governor



FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:35 p.m. O'CLOCK

JUN 14 1979

Secretary of State